

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861(c), and 6750 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 6653, 8420(e), and 8500 Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code, proposes to Repeal Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.42, 27.45, 27.50, 27.51, and 630.5 and Amend Sections 29.05, 29.40, 30.00, 120.7, 122, 123, 149, 165, 180, 630, 632, and 747, Title 14, California Code of Regulations, relating to Marine Protected Areas.

### **Informative Digest/Policy Statement Overview**

Existing regulations establish marine protected areas (MPAs) under a variety of designations and in a variety of locations in Title 14 of the California Code of Regulations. Other existing regulations refer to these same existing MPAs and/or MPA designations. As required by the Marine Managed Areas Improvement Act (MMAIA, Stats. 2000, ch. 385) the proposed regulation will reclassify existing MPAs designated in sections 27.20 through 27.51, 630, and 630.5 of Title 14 of the California Code of Regulations (Title 14) and sections 10801, 10900 through 10913, and 10932 of the Fish and Game Code (FGC) along with State Park Units with marine or estuarine subtidal components listed in Chapter 10 of Division 3 of Title 14.

The proposed action will move MPAs designated in Title 14 from their current sections, add them to Section 632, and repeal the existing sections (except those MPAs currently in Section 632) to facilitate understanding and eliminate unnecessary duplication. The proposed action will incorporate those MPAs designated in the FGC to Section 632 of Title 14. The proposed action will clarify the boundary descriptions and existing regulations for each MPA, **without** altering the existing regulations or boundaries. The proposed action will change the names of certain areas in addition to their classification to either clarify their physical location or simplify the name. The proposed regulation will additionally rename the existing Point Loma Reserve (Title 14, Section 27.50) as the “Mia J. Tegner State Marine Conservation Area” and the existing Newport Beach Marine Life Refuge as the “Robert E. Badham State Marine Park”.

The proposed regulation will add the general regulations for State Marine Parks to Section 632. The proposed regulation will modify references to MPAs found in sections 29.05, 29.40, 30.00, 120.7, 123, 165, 180, and 747 of Title 14 to comply with the new naming system. Editorial changes are also proposed to improve the clarity and consistency of the regulations and typographical errors found in these sections will be corrected. This includes clarifying that transit through existing MPAs with catch onboard and gear stowed is allowed.

Existing regulations found in Section 123 of Title 14 allow for commercial lobster, sea cucumber, crab, and sea urchin, permit holders to operate in the area between the high tide mark and 1,000 feet beyond the low tide mark without possessing a Tidal Invertebrate Permit. The Tidal Invertebrate Permit requirements include prohibitions of take in certain existing classifications of MPAs. The exemption from the Tidal Invertebrate Permit requirement does not exempt the above fisheries from the other take prohibitions found in Section 123. The proposed regulations will add a statement to sections 122 (lobster permits) and 180 (trap permits) indicating this and noting the other provisions of Section 123 still apply.

Existing policy permits commercial market squid permit holders to operate without a Tidal invertebrate Permit as well, though this exemption is not currently listed in Section 123. The proposed regulations will add this exemption to Section 123 and add a statement to Section 149 noting the exemption. Editorial changes are also proposed to improve the clarity and consistency of the regulations in Section 123. All of the above changes are summarized in Table 2 below.

Table 2. Summary of proposed changes.

<b>Section</b>	<b>Summary of Changes</b>
27.20	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.25	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.30	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.35	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.40	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.42	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.45	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.50	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632. Rename as the “Mia J. Tegner State Marine Conservation Area”.
27.51	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
29.05	Amend MPA name references and designations, add clarifications, and fix typographical errors.
29.40	Amend MPA name references and designations, add clarifications, and fix typographical errors.
30.00	Amend MPA name references and designations and add clarifications
120.7	Amend MPA name references and designations, add clarifications, and fix typographical errors.

Section	Summary of Changes
122	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
123	Amend MPA name references and designations, add clarifications, and fix typographical errors.
149	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
165	Amend MPA name references and designations and add clarifications.
180	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
630	Remove existing fully marine areas and move to Section 632, leave areas with a land component but add their marine component to Section 632. Clarify language and add boundary descriptions in Section 632.
630.5	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
632	Add all existing MPAs to this section using new classification system, add clarifying language for their regulations and boundary descriptions, and fix typographical errors.
747	Add new designations to list for guidelines for civil penalties for consistency with new naming system.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California on October 21, 2004 at 10:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Beach Resort, The Bay View Room, 2600 San Dunes Drive, Monterey, California on December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 3, 2004, at the hearing in Monterey, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. **Patricia Wolf, Department of Fish and Game, Marine Region, (562) 342-7108**, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above.

Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action does not change any existing regulations or restrictions within MPAs. By clarifying the regulations, classifications, and boundary descriptions, the proposed action may enhance compliance and public understanding of these areas.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: September 29, 2004

Robert R. Treanor  
Executive Director